

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WESCOM CAPITAL, INC.,

Plaintiff,

v.

ATLANTIS INTERNET GROUP CORP., a
Nevada corporation d/b/a/ ATLANTIS
INTERNET GROUP.COM, INC.,

Defendant,

Case No. C07-1912MJP

ORDER DENYING MOTION
FOR DEFAULT

This matter comes before the Court on Plaintiff's motion for default. (Dkt. No. 7.) After the motion was filed, Defendant Atlantis appeared, opposed the motion for default (Dkt. No. 8) and separately filed a motion to dismiss or stay pending arbitration (Dkt. No. 9.) Having considered the motion and response, Plaintiff's reply (Dkt. No. 12), and the record herein, the Court DENIES the motion for default.

Federal Rule of Civil Procedure 55 provides that when a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, the court clerk must enter default against that party. In this case, Defendant Atlantis Internet Group Corp. failed to timely plead or otherwise defend, but has now, ninety-five days after the complaint and summons were served, appeared and filed a motion to dismiss in lieu of an answer. (Dkt. No. 9.) Although Defendant's response to Plaintiff's complaint is untimely, the Court declines to enter default, in part to avoid protracted litigation over whether any default or default judgment should be set aside. See Fed. R. Civ. P. 55(c) & 60(b). The Court admonishes Defendant, however, that it must from this point forward abide by all applicable federal procedural rules.

1 The Court will consider the merits of Defendant's argument that the parties should
2 proceed to arbitration when it considers Defendant's motion to dismiss.

3 Dated: April 1, 2008.

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6 Marsha J. Pechman
7 United States District Judge
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